

In re ) Fair Hearing No. 9327  
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Appeal of )

The petitioner appeals the Department of Social and Rehabilitation Services' denial of funding for day care services provided to her child.

1. The petitioner is an ANFC recipient and the mother of a 6 1/2 year old girl. Last Spring, on the advice of her physician who was treating the petitioner for a serious emotional problem (suicidal depression and suicidal tendencies), she looked for, and found, a woman who could provide respite care for her child when the school year ended.

2. In early June, the petitioner made a written application for payment of the respite care through the Department of Social and Rehabilitation Services. The petitioner was orally assured by a worker that such funding was available and that the petitioner as an indigent incapacitated parent appeared to be eligible for such services. Her application was taken for processing.

3. On June 20, 1989, the petitioner, of necessity, began using the day care services though she still had no decision from the department on funding.

4. In July, after still hearing nothing from SRS, the petitioner called and was told that she had been found eligible based on her income and need but that the Department would not pay for child care unless it was provided by a person who was registered with the Department to provide such care.

5. After learning this news, the petitioner called several persons from a list of registered day care providers but none had an opening. Because she could find no opening in a registered home (and in her suicidal state was not particularly interested in doing more searching), and because she felt the child had become accustomed to and was happy with her current caretaker, the petitioner asked if she could have her current caretaker reimbursed. She was told that her provider would have to become a registrant before payment would be made. The petitioner was provided registration materials which she passed on to her child's caretaker along with an explanation of her need. The caretaker promised to look into it but apparently at some point decided not to proceed with registration although that fact was never communicated to the petitioner.

6. The child completed her respite care on July 20. On July 30, 1989, the petitioner received a written notice stating that her request for payment was being denied because the day care provider was neither licensed nor registered. The petitioner incurred expenses of \$58.00 for 40 hours of child care for the respite care which she was

able to pay eventually in small installments. She now seeks reimbursement of this expense from the Department. The petitioner maintains that the Department has no fixed rule prohibiting payment of non-registered care providers.

ORDER

The Department's decision is reversed and remanded to determine whether the petitioner's caregiver should be approved for payment of day care services.

REASONS

The rules promulgated by the Department of Social and Rehabilitation Services for payment of day care services provided to eligible individuals define a day care provider as:

Any person, facility or group licensed, registered or approved by the day care licensing authority, and/or authorized by the Department to provide day care.  
Day Care Regulations 4031.

The regulations further state that:

Reimbursement for day care is limited to day care providers which are licensed or approved by the day care licensing authority.  
Day Care Regulations 4036.

Temporary exceptions to this limitation may be made under any one of the following circumstances if a pre-authorization home visit is made and provision approval form signed and secured:

- a. No licensed/approved provider is available within 10 miles of the family's home, or place of employment or training;
- b. No licensed/approved provider is available which meets the special needs of the family (with regard to either the "unusual" hours and/or days of care, or the needs of the child for certain specialized day care services);

- c. There is no practical transportation to and/or from any available licensed/approved provider;
- d. The parent(s) can show cause not to use an available licensed/approved provider because of an unsatisfactory day care experience with that provider in the past;
- e. There are no spaces available with any licensed/approved provider;
- f. The parent(s) prefers to arrange for day care with a provider who is known to the child and who has provided satisfactory day care to the child on a regular basis in the past.

Temporary authorization to receive care from a provisionally approved day care provider cannot be made until one or both parents have visited at least one licensed/approved day care provider, to which there is practical transportation; and have submitted, in writing, reason for not using that provider.  
Day Care Regulations 4036.1.

The Department clearly has regulations allowing for and prescribing procedures for payments to non-registered day care providers in certain circumstances. There is no evidence that the Department considered the petitioner's caretaker under its reimbursement exception policy, particularly as she appears to meet the circumstances described in subparagraphs (e) and (f). Therefore, the Department's denial is reversed and remanded for a new decision made after consideration of the facts as they relate to the exception policy.

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